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सं० 9] नई दिल्ली, शनिवार, मार्च 6, 1993/फाल्गुन 15, 1914
No. 9] NEW DELHI, SATURDAY, MARCH 6, 1993/PHALGUNA 15, 1914

इस खण्ड में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासन को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 16 फरवरी, 1993

आ. अ. 59 —निर्वाचन आयोग 4-बम्बई दक्षिण संसदीय निर्वाचन क्षेत्र से लोक सभा के श्री मुरली एस. देवरा के निर्वाचन को प्रश्नगत करने वाली 1991 की निर्वाचन अर्जी सं. 1 में बम्बई उच्च न्यायालय, बम्बई के तारीख 23 मार्च, 1992 वाले निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित करता है।

[सं. 82/महा.-लो.स. 1/91 (बम्बई)]
आदेश से,
बलवन्त सिंह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 16th February, 1993

O.N. 59.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgement dated 23rd March, 1992, of the High Court of Judicature at Bombay, in Election Petition No. 1 of 1991, calling in question the election of Shri Murli S. Deora to the House of the People from 4-Bombay South Parliamentary Constituency.

[No. 82/MT-HP/1/91(BOMBAY)]
By Order,
BALWANT SINGH, Secy.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Election Petition No. 1 of 1991

Shri Suresh Murari Narvekar. Petitioner.

Vs.

Shri Murli S. Deora. Respondent.

None for petitioner,

S/Shri K. K. Singhvi, K. R. Dhanuka, M. M. Vashi and S. D. Vyas for the Respondent.

Coram. R. G. Sindhakar, J.

Dt. 23rd March, 1992.

P.C.

This petition has been peremptorily fixed for hearing today. On two earlier occasions adjournments were sought for and granted. In spite of this neither the petitioner nor his counsel is present before me today when the matter is called out. As per the ruling reported in AIR 1984 SC 135, Dr. P. Nalla Thampy Thera Vs. B. L. Shanker & Ors. the petition is liable to be dismissed.

The petition therefore stands dismissed with costs.

Office to take appropriate steps in accordance with law and communicate the decision to the concerned authorities.

नई दिल्ली, 16 फरवरी, 1993

आ.अ. 60.—निर्वाचन आयोग 4—बम्बई दक्षिण संसदीय निर्वाचन क्षेत्र से लोक सभा के श्री मरली देवरा के निर्वाचन का प्रयवगत करने वाली 1991 की निर्वाचन अर्जी सं. 5 में बम्बई उच्च न्यायालय के तारीख 27 जनवरी, 1992 वाले निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित करता है।

[सं. 82/महा.-लो. सं./5/91 (बम्बई)]

आदेश से,

बलवन्त सिंह, सचिव

New Delhi, the 16th February, 1993

O.N. 60.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgment dated 27th January, 1992 of the High Court of Judicature at Bombay in Election Petition No. 5 of 1991, calling in question the election of Shri Murli Deora to the House of the People from 4-Bombay South Parliamentary Constituency.

[No. 82/MT-HP/5/91(BOMBAY)]

By Order,

BALWANT SINGH, Secy.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Election Petition No. 5 of 1991

Shri Premkumar Shankardatt Sharma,
Indian Inhabitant, of Bombay
residing at MH 91 Khemraj Bhavan,
I-26-A, 7th Khetwadi Back Road,
(Khemraj Krishnadas Marg) Bombay-4.

...Petitioner.

Vs.

1. Shri Murli Deora, Indian Inhabitant, of Bombay residing at House No. 55, 5-D Ananta B, Dr. Rajab Ali Patel Marg, Bombay-400026.
2. Shri Suresh Narvekar, Indian Inhabitant, residing at 8/7 Bardys Flat, Sorab Bharucha Marg, Colaba, Bombay-400005.
3. Shri S. R. Agarwal, India Inhabitant of Bombay, residing at 11 Shane Apartment, 2nd floor, 923, Borivali, TPS SVP Road, opp. Bhagavati Hospital, Borivali, Bombay-400103.
4. Shri Ajwani Niranjansingh, Indian Inhabitant of Bombay, residing at M.H.N. 350-A, C. Bhulabhai Desai Road, Hira Panna, B. Bombay-400026.
5. Shri Azizbhai, Indian Inhabitant of Bombay, residing at Supariwala House, 2nd floor, Pitha St., Bombay-1.
6. Shri Arvind Tibrewala, Indian Inhabitant, of Bombay, residing at 42, Kumudini Devi Dayal Road, L. B. Shastri Marg, Mulund (W), Bombay-400080.
7. Shri Ansari M. I, Indian Inhabitant, of Bombay residing at 2/19 Sarmawala Chawl, Ground floor, R. No. 6, Imamwada, Khadeyki Badi, Bombay-9.
8. Shri Subedar P. S. Aserkar, Indian Inhabitant of Bombay, residing at Room No. 20, 3rd floor, Dhobi Chawl, Khotachi Wadi, Girgaum, Bombay-4.
9. Dr. Uttamrao Keshavrao Jadhav, Indian Inhabitant of Bombay residing a 403, 3rd floor, Shalaka Sangh Coop. Housing Society Ltd. Near Cooperage Telephone Bldg, M. Karve Road, Bombay-400021.
10. Shri Kalki Gaur, Indian Inhabitant of Bombay residing at 706 Maker Chambers V. Jamnlal Bajaj Marg, Nariman Point, Bombay-21.
11. Smt. Choithramni Sunita Ram, Indian Inhabitant, of Bombay residing at 17 Deluxe Apartment, Altamount Road, Bombay-400026
12. Shri Jain Vinod Ghevarchandji Indian Inhabitant of Bombay residing at M.H. 183—193 Homidabai Bldg. Ground floor, Room no. 2, Sant Sena Maharaj Marg, Bombay-400004.
13. Shri Daftari Jivanlal Girdharlal Indian Inhabitant of Bombay residing at Block 202-A Wing Chandanbala Apartment, 2nd floor, Walkeshwar, Bombay-400006.
14. Shri Dadheech Ravishankar, Indian Inhabitant, of Bombay 203-A Sati Smruti, Shri Rani Sati Marg, Makrani Pada, Malad (E) Bombay, 97.
15. Shri R. K. Deshmukh, Indian Inhabitant of Bombay residing at 5 Gilmour Bldg, Ground floor Arthur Bunder Road, Colaba, Bombay-400005.
16. Shri Prakashkumar Sharma, Indian Inhabitant, residing at 220/232 Dr. Cawesli Hormasji Street, Bombay-400007.
17. Shri Mohmed Hanif Mansuri, Indian Inhabitant, residing at 175 Laxminarayan Bldg, 3rd floor, Bara Imam Road, Bombay-400003.
18. Shri K. Murraka, Indian Inhabitant, of Bombay residing at D-11 Dhiraj Poddar Road, Malad (E) Bombay-97.
19. Shri Ramesh Vasudeo Warang, Indian Inhabitant, of Bombay residing at Joy Villa 3rd Koli Lane, Colaba, Bombya-400005.
20. Shri Valia Harbhajan Singh, Indian Inhabitant, of Bombay residing at M/s. 19/651, Chembur Colony, Bombay-74.

21. Shri Sunder Punjabi, Indian Inhabitant, of Bombay, residing at 1 Shripat Bhavan, Wadia Street, Tardeo, Bombay-400034. ...Respondents.

M/s. Y. K. Sharma with Sanjeev Kanchan for petitioner
Shri K. K. Singhavi with Shri M. M. Vashi for respondent no. 1.

Shri M. G. Pandya for respondent no. 2. Ms. Geeta Shastri for respondent no. 4.

Dr. U. K. Jadhav for respondent no. 9.
Shri K. R. Dhanuka for respondents 18.
Respondents-rest served.

JUDGEMENT:

Coram : R. G. Sindher J.
Dated 27th January 1992.

By this petition the petitioner has challenged the election of respondent No. 1. Petitioner and other respondents were the candidates who contested the general election to the Parliament held from the constituency No. 4, Bombay South Parliamentary Constituency. The elections were held on 15th June, 1991. Counting commenced on 17th June 1991 and results were declared on the same day i.e. 17th of June, 1991. The petitioner was a candidate nominated by the Bharatiya Janata Party and respondent No. 1 is the successful candidate who was nominated by the Congress (I) Party. Respondent No. 2 was a candidate nominated by the Janata Dal.

2. The case of the petitioner was that the respondent No. 1 has committed corrupt practice within the meaning of the provisions of section 100 and section 123 of the Representation of the Peoples Act, 1951 (hereinafter referred to for the sake of brevity as the said Act. One of the contentions was that the respondents falsely propagated that Shri Narvekar—respondent No. 2 had withdrawn his contest in favour of the respondent No. 1. Wide publicity was given to this by the Government agencies as well as otherwise. It is also contended that the expenditure account submitted by the respondent No. 1 was not true and correct and he has spent money far in excess of the limit put under the law. It was also contended that the election of the respondent No. 1 should be set aside on the ground that the personal character of the petitioner was attacked by the respondent No. 1 and his brother Mahabir Prasad Deora, who had himself offered as a candidate at the said election from the said constituency but had withdrawn before the last date prescribed for withdrawal of candidature. He stated that therein the respondent's brother Mahabir Prasad Deora had issued a statement making allegations that the petitioner has distributed a pamphlet alleging deramatory remarks against Deora family by the respondent No. 1 and thus disclosisng to the voters that a defamatory suit for Rs. 50 crores is being filed against the petitioner and thus resorting to malicious propaganda saying that the defamatory suit is filed against the petitioner and a news item appeared in the Times of India and Mumbai Sakal and other prominent news papers dated 12th June, 1991 and 13th June, 1991 respectively. Petitioner also stated that he himself has read these news reports. Petitioner also produced extracts of those news items alongwith the petitioner. He further stated that the petitioner had in fact denied such allegations and also issued a press statement that the petitioner is in no way involved and denied the allegation of such publication. The petitioner further stated that due to such news items the personal image of the petitioner was affected and also it affected the reputation of the petitioner and thus respondent No. 1 and/or his election agents and/or any other person particularly his brother with the consent of the respondent No. 1 has committed corrupt practices within the meaning of section 123(4) of the said Act. He also made certain other allegations of corrupt practice against the respondent No. 1. In these circumstances he praved for setting aside the election of the respondent No. 1 from the constituency and praved for directions to hold fresh election from that constituency. He also praved for cost and such other reliefs as petitioner was entitled to.

3. The written statement came to be filed by the 1st respondent denying the allegations made in the petition. Respondent No. 4 also filed his written statement.

4. In the written statement respondent No. 1 had contended that Mahabir Prasad Deora, respondent No. 1's brother should have been joined as a necessary and proper party to the petition, in view of the allegations made against him in his election petition and more particularly in para 23 of the petition. It was therefore, prayed that the petition was liable to be dismissed for non-joinder of Mahabir Prasad Deora, Amongst other issues framed, issue No. 1 is as under :

> "Whether Mahabir Prasad Deora is a necessary party, if so, is petition liable to be dismissed for his non-joinder ?"

This was one of the 4 issues that has been tried as a preliminary issue and the learned counsel appearing on behalf of the petitioner and respondent No. 1 have been heard on that issue in the first instance.

5. The contention of the respondent No. 1 is that Mahabir Prasad Deora is a necessary party. It was urged that section 86 of the said Act provides that it is obligatory on the part of the High Court to dismiss an election petition which does not comply with the provisions of sections 81 or 82 or section 117 of the said Act. Emphasis was laid on the words "shall dismiss". The contention of the respondent No. 1 is that under section 82(b) of the said Act, petitioner shall join as respondents to the petition as any other candidate again whom allegations of any corrupt practice are, made in the petition. The argument further advanced was that within the meaning of section 79(b) of the said Act a candidate means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when with the election in prospect, he began to hold him self out as a prospective candidate. Therefore in substance the submission was that since Mahabir Prasad Deora was a candidate and since he was not joined, though allegation of corrupt practice were made against him, in the petition, petition is liable to be dismissed under section 86 of the said Act.

6. In the first instance on behalf of the petition it was urged that there was no material to show that he had offered himself as candidate and on that point the learned counsel for the respondent no. 1 produced a receipt for notice of withdrawal given by Shri Mahabir Prasad Deora. The Returning Officer had acknowledged the same. He has also produced notice of nomination paper and notice of scrutiny given to Mahabir Prasad Deora by the Returning Officer on 23-4-1991 the date of withdrawal notice being 27-4-1991. Therefore there is no force whatsoever in the contention that he as not a candidate. Turning to the definition of word candidate given under section 79, of the said Act, it is clear that a 'candidate' has been defined as meaning 'a person who has been or claims to have been duly nominated as a candidate at any election'.

7. A reference was made to a decision of this Court in AIR 1990 Bombay 90-Shrikrushna Sadashiv Dhamankar vs. The Nasik Merchants Cooperative Bank Ltd. and ors.. This court observed in para 22 of the said judgment as under :

> "We are also of the opinion thaat the Additional Commissioner was wrong in holding that the candidates who withdrew from the election should have also been made parties to the election and the defect of non-joinder of such persons as parties was fatal to the petition. There is nothing in the Act or the Rules which requires that all persons who nad originally joined the election fray should be joined in the election petition. In the present petition, the petitioner is challenging the election of only those persons who were elected and who, according to him, had indugled in corrupt practices".

The matter however which arose before that court was under the Maharashtra Cooperative Soceities Act, 1960 and not under the Representation of Peoples Act. 1951. The head note B therefore makes a reference to section 82, which appears to be misleading.

8. In a decision in the case of Shiv Chand vs. Ujagar Singh and anr. reported in AIR 1978 SC 1583, the Supreme Court considered the case of a candidate who had retired

from the contest for the seat, although duly nominated as a candidate. When the disappointed candidate challenged the election of the successful candidate without joining Mal Singh retired candidate, though allegations were against the retired candidate of corrupt practices, it was held that Mal Singh ought to have been joined as a party to the petition. It was clearly observed that to such pleadings section 82 of the said Act was attracted. That provision states that a petitioner shall join as respondent to his petition any candidate against whom allegations of corrupt practice are made in the petition. By this mandate, the petitioner was bound to implead as respondent Shri Mal Singh. But he omitted to do so initially".

9. In a decision of the Supreme Court in AIR 1973 SC 2513, Krishan Chander vs. Ram Lal, the Supreme Court held that the provisions of section 82(b) of the said Act were mandatory and the effect of not impleading a candidate has to be tried as a preliminary issue. In another decision of the Supreme Court in AIR 1964 SC 1366-Mohan Singh vs. Bhanwarlal and ors. similar question arose where in an election petition to set aside the election of the successful candidate B, it was alleged that B had offered to C another independent candidate, that he (B) would help C in getting him an employment at a certain place and that C should withdraw his candidature, and that as the consequence of this offer, C. withdrew his candidature before the date of polling. There were some other corrupt practices alleged. These were that B was instrumental in publishing certain leaflets containing statments of fact with regard to the personal character or conduct of the applicant which were false and B believed to be false or did not believe to be true and that the statements were calculated to prejudice the prospects of the applicant at the election. A prayer was made for an order declaring the applicant elected. C. was not joined as a party". There it was held that C had filed his nomination paper, and on that account by virtue of the definition of Sec. 79 he was a candidate for the purposes of Parts VI, VII and VIII, and did not cease to be a candidate merely because he withdrew his candidature. If therefore the petition contained any imputation of corrupt practice made against C, it would not be regarded as properly constituted unless he was impleaded as a respondent, for, by the definition of 'candidate' in sec. 79(b), the expression 'any other candidate' in sec. 82(b) must include a candidate who had withdrawn his candidature." with this decision of the Supreme Court, it would not be open to the learned counsel for the petitioner to rely upon the decision of this Court in Shrikrishna's case. I therefore, hold that it has been shown that Mahabir Prasad Deora was a candidate within the meaning of section 79(b) of the said Act. It is obvious that he has not been joined as party-respondent to the present petition and, therefore, it was urged on behalf of the respondent no. 1 that the peittion is liable to be dismissed with costs because allegations of corrupt practices have been made and once it is held that the allegation of corrupt practices are made against a candidate and he has not been joined as a party to the petition, dismissal of the petition must follow.

10. It would therefore now be necessary to refer to the allegations in the petition so far as Mahabir Prasad Deora is concerned. They are contained in para 23 of the petition and I quote :—

> "23. The petitioner says that the respondent no. 1 also resorted to corrupt practices by attacking the personal character of the petitioner. The respondent no. 1's brother Shri Mahabir Prasad Deora, issued a statement making allegation that the petitioner has distributed a Pamphlet alleging defamatory remarks against Deora family by the respondent no. 1 and thus disclosing to the Voters that a defamatory suit for Rs. 50 crores is being filed against the petitioner and thus resorting to malicious propaganda saying that the defamatory suit is filed against the petitioner and a news item appeared in The Times of India and Mhumbai Sakal and other prominent News Papers dated 12-6-1991 and 13-6-1991 respectively. The petitioner submits that he himself has read these news reports. The petitioner relies upon the said news report herewith annexed as Exhibit M and M1. The petitioner in fact denied such allegation and also issued a press statement that the petitioner is in no way involved and denied the allegation of such publication. The petitioner relies upon the said press notice dated 12-6-1991 of petitioner's party, annexed hereto and marked Exhibit M2. The petitioner says that due to such news item the personal image of the petitioner was affected and also it affected the reputation of the petitioner and thus respondent no. 1 and/or his election agents and/or any other person particularly his brother with the consent of the respondent no. 1 has committee corrupt practices within the meaning of section 123(4)".

11. It was argued on behalf of the petitioner that the allegations made in the above said para 23 of the petition, do not amount to allegations of corrupt practices within the definition of section 123 of the said Act. He submits that before it is held that he should have been made a party to the petition, court must come to the conclusion that there are sustainable allegations of corrupt practices. He relied upon the decision of the Supreme Court AIR 1958 SC 857—S. B. Adityan Vs. S. Kandaswami and Ors. There it has been observe as under :

> "An acceptance of a gift made to a candidate with the intention of inducing him to drop out of the election contests, is not a corrupt practice within the meaning of Section 123(1)(a). What the definition in Section 123(1)(a) makes the corrupt practice of bribery is a 'gift' offer or promise by a candidate or his agent or by any other person, of any gratification" made with the object mentioned. The words "gift, offer or promise by a candidate or his agent or by any other person" clearly show that what is contemplated is the making of a gift. These words are wholly inappropriate to describe the acceptance of a gift. The words "with the object, directly or indirectly of inducing" also indicate that only the making of a gift is contemplated, for the object is of the person making the gift, and clearly not of the person accepting it.
>
> It is true that a gift contemplates both a giving and an acceptance; but these are none the less different acts and it is open to the legislature to attach certain consequences to one of them only. It was therefore open to the legislature in enacting Section 123(1) to provide that the making, that is to say, the giving of a gift alone should be a corrupt practice. This is what it has done, it has not made the receipt of a gift a corrupt practice. It has deliberately omitted the acceptance of a gift from corrupt practices described in the Act. Though a gift cannot be made without an acceptance of it, such acceptance has not been made a corrupt practice".

This was the only allegation made against the candidate It was therefore, held there, not necessary to join him and the non-joinder will not entail any dismissal of the election petition. Therefore what had happened in that case, with respect, was that the allegations themselves did not disclose a corrupt practice within the meaning of section 123(1) of the said Act and, therefore, even if they were held proved, no stigma could have been attached to the candidate against whom they were made necessitating his joinder in the petition to defend these allegations.

12. In another decision in AIR 1958 Rajasthan 324 Sheopatsingh Vs. Narishchandra, on which reliance has been placed, same view has been taken. There the question of making a gift by a candidate was held to be not corrupt practice and therefore, his joinder held not necessary. In the case of Mohan Singh (supra), the Supreme Court was of the view that the petition did not contain any allegation of corrupt practice. That was a case where there was a mere offer to help to secure employment without money and that was held not such offer of gratification, within the meaning of Section 123(1)(B) of the said Act. That was a case which came before the Supreme Court after the final decision of the petition and there the onus that lay about the publication was held to have been not discharged. Therefore if allega-

tions of corrupt practices within the meaning of Section 123 of the said Act are made, against such candidate, it is obligatory upon the petitioner to join him in the petition and failing to do so must entail consequence of dismissal of the petition. What is urged on behalf of the petitioner is that the allegations which have been made in para 23 of the petition and which is the only relevant para, do not disclose allegations of corrupt practices and therefore, it was not necessary to join him as party. I have already quoted the entire para 23 earlier. On reading the same I am unable to accept the submission made on behalf of the petitioner. It has been specifically alleged therein that the respondent No. 1 resorted to corrupt practices by attacking personal character of the petitioner. It has been further stated that respondent No. 1's brother Mahabir Prasad Deora issued a statement making allegation that the petitioner has distributed a pamphelt alleging defamatory remarks against Deora family by the respondent No. 1 and thus disclosing to the Voters that a defematory suit for Rs. 50 crores is being filed against the petitioner and thus resorting to malicious propaganda saying that the defamatory suit is filed against the petitioner. He has annexed to the petition cutting of news papers in which news items appeared. A reference in that connection was made to section 123(4) of the said Act. Subsection (4) of section 123 speaks of publication by a candidate or his agent or by any, other person, with the consent of a candidate or his election agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidate or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospect of that candidate's election. It appears that the reading of para 23 of the petition is clear that there are allegations that the respondent No. 1 has resorted to corrupt practice by attacking the personal character of the petitioner and the respondent No. 1's brother Mahabir Prasad Deora issued a statement making allegation that the petitioner has distributed a pamphlet allegation defamatory remarks against Deora family by respondent No. 1. It was further stated that thereby it was disclosed to the voters that a defamatory suit for Rs. 50 crores is being filed against the petitioner and thus resorting to malicious propanda saying that the defamatory suit is filed against the petitioner. It was ultimately stated in the pen ultimate portion of that para that due to such news item the personal image of the petitioner was affected and also it affected the reputation of the petitioner and thus respondent no. 1 and/or his election agents and/or any other person particularly his brother with the consent of the respondent No. 1 has committed corrupt practices within the meaning of section 123(4). With these allegations and categorical statement that corrupt practice was committed by the said Mahabir Prasad Deora, it would be difficult to say that there was no such allegation of corrupt practice. It is also difficult for me to accept the contention that even if the allegations made in para 23 of the petition are accepted, they do not amount to allegations of corrupt practice. If that is so, then it would be difficult to justify non-joinder of Mahabir Prasad Deora on the ground that there was no allegation of corrupt practice against him. Once it is held that there was allegation of corrupt practice against him and it is further held that he has not been shown as party to the petition, then consequence is inevitable as laid down by the provisions of section 86 of the said Act.

13. It is true that the petition is being dismissed at the threshold without examining the truthfulness or otherwise of the allegations made by the petitioner. The Supreme Court in the decision of Shiv Chand's case, speaking through Justice V. R. Krishna Iyer, observed as under :

> "The substance of the matter must govern because hypertechnicality, when the public policy of the statute is fulfilled, cannot be permitted to play the procedural tyrant to defeat a vital judicial process, namely, investigation into the merits of the election petition".

However, in that case also the Supreme Court was of the view that because of certain allegations made against Mal Singh he was a necessary party to the proceedings. What had happened therein was that Mal Singh applied for joinder as party to the proceedings and that request was not granted by the courtbelow. The Supreme Court in the circumstances of that case granted that request and sent down the petition for further hearing. Here in this case such a situation has not arisen. The mandate of the legislature contained in section 86(1) of the said Act ordains the court to dismiss the petition, if it is not in compliance with the provisions of section 82 of the said Act. As already pointed out this petition suffers from the vice of non-joinder of Mahabir Prasad Deora against whom allegations of corrupt practice have been made. This being the position, the present petition is liable to be dismissed.

14. Issue no. 4 was not pressed on behalf of the petitioner. However, arguments were advanced by the learned counsel Mr. Vashi for respondent no. 1 on issue nos. 2 and 3. Since I am holding in favour of the respondent no. 1 on issue no. 1, I do not think it necessary to record my finding on issue nos. 2 and 3 which have been framed and directed to be tried as preliminary issues.

ORDER

Petition is dismissed with costs. Costs to come out of the amount deposited. Excess amount of cost, if any, will have to be recovered from the petitioner.

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